

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

COREY M HONDZINSKI
Claimant

APPEAL NO. 11A-UI-01328-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 12/26/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated January 25, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on March 8, 2011. The claimant participated personally. The employer participated by Mr. Matt Edgington, store manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Corey Hondzinski was employed by Casey's General Stores from October 8, 2007, until December 15, 2010, when he was discharged from employment. Mr. Hondzinski worked as a part-time cook/cashier and was paid by the hour. His immediate supervisor was Mr. Matt Edgington.

The claimant was discharged based upon a customer complaint that Mr. Hondzinski had stated too long of a waiting time for a pizza order and because the claimant had been rude in the manner in which he presented that information to the customer.

On the day in question, Mr. Hondzinski had been busy preparing a number of pizzas and initially believed that the wait time for a pizza order would be approximately one hour. When the claimant noted that a number of the pizza orders had been completed, he went back to the sales area in an attempt to find the customer to indicate that the wait would be substantially less. The customer, however, had left the premises. Although the customer had apparently complained to an assistant manager, the assistant manager made no comment to Mr. Hondzinski about the matter at that time.

Prior to being discharged, the claimant had received warnings about gasoline drive-offs but had not received any written warnings or counselings about his attitude or the manner in which he had dealt with customers or employees.

Because the employer felt that the wait time Mr. Hondzinski had given to the customer had not been accurate and there had been an allegation that the claimant had been rude, a decision was made to terminate Mr. Hondzinski from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy; but, if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. In this case, the claimant appeared personally and provided firsthand, sworn testimony denying being rude and explaining a mistake in the wait time given to a patron for a pizza order. In contrast, the employer relied upon hearsay evidence in support of its position. Although hearsay evidence is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable. The claimant has provided a reasonable explanation for his error in the waiting time for the pizza order and has denied being rude or abusive. The claimant had not been given a written warning prior to his discharge for rudeness or the manner in which he had dealt with company employees or customers. The evidence is not sufficient to establish benefit-disqualifying misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 25, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw